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| 10/532,594 | 08/11/2005 | Stuart Charles Wray | 038665.56185US | 9463 |
| 23911 7590 01/22/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300 | | | | |
| EXAMINER | | | | |
| ELAHEE, MD S | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,594

Applicant(s)

WRAY ET AL.

Examiner

MD S. ELAHEE

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 04/25/2005

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is responsive to an amendment filed 12/11/2008. Claims 1-6, 8 and 9 are pending. Claim 7 has been previously cancelled.

Response to Arguments

2. Applicant's arguments mailed on 12/11/2008 Remarks have been fully considered but they are not persuasive.

Regarding claim 1, the Applicant argues on page 3 that the Prehofer patent does not teach the reduction of priority if the transmission quality of data packets is too low. This argument is not relevant since the applicant did not claim the limitation. However, in col.6, lines 16-40, Prehofer teaches that data packets associated with video data transmission service are assigned to a lowest priority class if a lower transmission bandwidth is achieved.

The Applicant further argues on pages 3-4 that the paragraphs of the Yamamoto publication cited in the outstanding Office Action make clear the distinction between this reference and the subject matter of claim 1. Examiner respectfully disagrees with this argument. It is because, examiner depends upon Yamamoto only for the teaching of the missing element of “determining for how long a period the actual packet loss rate has been happening” in Prehofer’s teaching. Yamamoto teaches this limitation (see page 4, paragraphs 0011, 0012).

Thus the rejection of the claim in view of Prehofer and Yamamoto remain.

Claims 3, 5, 6 and 8 are rejected for the same reasons as discussed above with respect to claim 1.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on March 07, 2008 was received. The submission of IDS on March 07, 2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement submitted on March 07, 2008 is being considered by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
7. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prehofer (U.S. Patent No. 6,958,974) in view of Yamamoto et al. (Japanese Pub. No. 2003-249945).

Regarding claim 1, with respect to Figure 1, Prehofer teaches a method of call for Voice over IP [i.e., continuous streams of data] in packet switched networks including at least two local area networks (Fig.1; DK and ZK) that are in communication with one another across a connecting network (Fig.1; ZW1 to ZW4), the method comprising the steps of:

determining a demanded quality grade [i.e., acceptable packet loss rate] for a call which is to be established between two of the local area networks (col.3, lines 11-18, col.5, lines 12-45);

Prehofer further teaches comparing acknowledged quality grade [i.e., actual packet loss rate] to the demanded quality grade [i.e., acceptable packet loss rate] (col.3, lines 18-38, col.5, lines 37-45).

However, Prehofer does not specifically teach dropping the call if the actual packet loss rate is greater than the acceptable packet loss rate. Prehofer suggests that data transmission needs to be terminated if the data service quality is being too poor (col.2, line 67-col.3, line 3). Prehofer further suggests dropping data packets of data transmission service to maintain the higher priority quality classes of data transmission service (col.6, lines 16-40, col.6, line 58-col.7, line 2). Yamamoto teaches disconnecting [i.e., dropping] the call if the actual packet loss rate is greater than the acceptable packet loss rate (page 4, paragraphs 0011, 0012). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Prehofer to incorporate the feature of dropping the call if the actual packet loss rate is greater than the acceptable packet loss rate in Prehofer's invention as taught by Yamamoto. The motivation for the modification is to do so in order to discontinue a poor quality call such that a user can save cost for the call.

Prehofer further teaches wherein, prior to actually dropping a call, changing the priority of the transmission of the continuous stream of data when the actual packet loss rate is not acceptable and repeating steps a) to c) (col.3, lines 27-35, 46-61, col.5, lines 45-59).

Regarding claim 2, Prehofer, as applied to claim 1, does not specifically teach determining for how long a period the actual packet loss rate has been happening and utilizing that period in

deciding to drop the call. Yamamoto teaches determining packetizing period [i.e., for how long a period] the actual packet loss rate has been happening and utilizing that period in deciding to disconnect [i.e., drop] the call (page 4, paragraphs 0011, 0012). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Prehofer to incorporate the feature of determining for how long a period the actual packet loss rate has been happening in Prehofer's invention as taught by Yamamoto for utilizing that period in deciding to drop the call. The motivation for the modification is to do so in order to estimate total packets loss for a call in a particular period of time such that the system can reduce the overflow of data traffic by dropping the call after comparing the estimated packets loss with an acceptable total number of packets loss for the call.

Regarding claim 4, Prehofer, as applied to claim 2, teaches increasing the priority of the transmission of the continuous stream of data when the actual packet loss rate is not acceptable and repeating steps a) to c) (col.3, lines 27-35, 46-61, col.5, lines 45-59).

8. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prehofer in view of Yamamoto et al. further in view of Kalmanek, Jr. et al. (U.S. Patent No. 7,245,610).

Regarding claims 3 and 6, Prehofer, as applied to claims 2 and 1, in view of Yamamoto does not specifically teach playing a recorded announcement when the call is to be dropped. Kalmanek teaches playing a recorded announcement when the call is to be dropped (fig.13; col.54, lines 41-58, col.55, lines 3-9). Thus, it would have been obvious to one of ordinary skill

in the art at the time the invention was made to modify Prehofer in view of Yamamoto to incorporate the feature of playing a recorded announcement when the call is to be dropped in Prehofer's invention in view of Yamamoto's invention as taught by Kalmanek. The motivation for the modification is to do so in order to inform a caller about the status of the call connection such that that the caller can try again later and do other work instead of calling up the same number again and again.

9. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prehofer in view of Yamamoto et al. further in view of Kalmanek, Jr. et al. further in view of Wu (U.S. Pub. No. 2005/0147052).

Regarding claims 5 and 8, Prehofer, as applied to claims 3 and 6, in view of Yamamoto further in view of Kalmanek does not specifically teach storing data relating to dropped calls for future use. Wu teaches storing data relating to dropped calls for future use (page 2, paragraphs 0024, 0027). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Prehofer in view of Yamamoto further in view of Kalmanek to incorporate the feature of storing data relating to dropped calls in Prehofer's invention in view of Yamamoto's invention further in view of Kalmanek's invention as taught by Wu for future use. The motivation for the modification is to do so in order to record call processing failure such that troubleshooting can be done in order to correct the call processing failure. Furthermore, the modification of storing the dropped calls/call processing failure data and correcting the data gives additional benefit of improving overall system performance.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prehofer in view of Yamamoto et al. further in view of Wu (U.S. Pub. No. 2005/0147052).

Regarding claim 9, Prehofer, as applied to claim 1, in view of Yamamoto does not specifically teach storing data relating to dropped calls for future use. Wu teaches storing data relating to dropped calls for future use (page 2, paragraphs 0024, 0027). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Prehofer in view of Yamamoto to incorporate the feature of storing data relating to dropped calls in Prehofer's invention in view of Yamamoto's invention as taught by Wu for future use. The motivation for the modification is to do so in order to record call processing failure data such that troubleshooting can be done in order to correct the call processing failure. Furthermore, the modification of storing the dropped calls/call processing failure data and correcting the data gives additional benefit of improving overall system performance.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MD S. ELAHEE whose telephone number is (571)272-7536. The examiner can normally be reached on Mon to Fri from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/MD S ELAHEE/
MD SHAFIUL ALAM ELAHEE
Primary Examiner
Art Unit 2614
January 22, 2009